

March 9, 2018

CITY OF TAMPA – CITY COUNCIL INITIATED TEXT AMENDMENT

REGARDING GRAND TREE REMOVAL AND SINGLE-FAMILY DETACHED RESIDENTIAL

Sec. 13-45. - Same—Tree removal and replacement and tree trimming; exemptions.

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(g) *Standards for review of application for tree removal and replacement.*

- (1) *Intent.* These regulations have been adopted to preserve and protect existing grand and protected trees in the city. These regulations have also been adopted to allow for the removal of grand and protected trees if they are hazardous, causing structural damage to the foundation, structural walls or roof structure of an existing building or when necessary to allow for reasonable use of a parcel or property. If grand or protected trees are removed, it is also the intent of these regulations to require that those removed or protected trees be replaced in order to preserve the tree canopy in the city thereby protecting the environment and enhancing the natural beauty of the city. However, it is not the intent of this chapter to preclude reasonable use of a parcel when the terms of these regulations are inconsistent with the city's zoning code or to inordinately burden the reasonable use of a parcel of property.
- (2) *General standards.* In connection with the review of applications for the removal of protected or grand trees the following general standards shall apply:
 - a. *Hazardous trees.* A hazardous tree shall be permitted to be removed. The determination of whether a grand or protected tree is hazardous shall be made in accordance with the "tree hazard evaluation form," which is "Exhibit I," at the end of this chapter and which is incorporated herein by this reference. The tree hazard evaluation shall be in writing and shall conclude whether the grand or protected tree constitutes a hazardous tree. The city's Natural Resources Coordinator, or designee may also recommend the trimming of a grand or protected tree in lieu of removing the grand or protected tree if trimming will adequately address the hazardous condition.
 - b. *Reasonable use.* A grand or protected tree shall be permitted to be removed if the grand or protected tree denies or precludes reasonable use of a parcel of property. For purposes of this chapter, reasonable use shall mean an actual, present use or activity on a parcel of real property (including periods of inactivity which are normally associated with, or are incidental to, the nature or type of use or activity), or such reasonably foreseeable, non-speculative land uses which are suitable for the subject parcel of property, which are compatible with adjacent land uses, and which have created an existing fair market value in the parcel of property greater than the fair market value of the actual, present use or activity on the parcel of property. In determining reasonable use of a parcel of property the following factors shall be considered:
 1. The hazard evaluation of the tree based on the "tree hazard evaluation form" attached to this chapter as "Exhibit I" if one (1) is required by this chapter or is performed at the request of the applicant;
 2. The land use classification of the parcel of property on which the tree is located;
 3. The zoning of the parcel of property on which the tree is located;
 4. Any prior or existing development on or use of the property (including the applicable zoning, permitting and subdivision history of that parcel);

5. The impact of the grand or protected tree(s) on the buildable area of a parcel as shown by a survey or drawing of the parcel of property (to scale) accurately depicting the location of the grand or protected tree(s) including the minimum protective root zone required by this chapter around the tree(s) and its impact on the buildable area of that parcel of property;
6. Any special circumstances affecting the development of that parcel of property, including without limitation, any unusual topography and fill requirements;
7. Existing uses or development pattern on similarly situated property located adjacent to or near the parcel of property in question;
8. Any effort by the permit applicant to redesign the proposed development, structure or use in a manner to retain or preserve the grand or protected tree;
9. The tree regulations in effect at the time the property owner acquired title to the parcel of property; and
10. Any other information that would be pertinent in determining whether the removal of a grand or protected tree is required to allow reasonable use of a parcel including without limitation, bona fide, valid appraisals of the fair market value of the parcel of property in question and a bona fide valuation of the tree(s) to be removed based on generally accepted standards (such as those published by the International Society of Arboriculture).

~~c. — *Removal of grand tree causing structural damage to existing building.* A grand tree shall be permitted to be removed when the Natural Resources Coordinator, or designee makes a determination that the grand tree has grown or likely will grow within one year in such a manner that it is causing or will cause structural damage to the foundation, structural walls or structural roof of an existing building.~~

~~1. — Demolition of the existing building for which the grand tree was removed is prohibited for a period of two (2) years. No permit shall issue for demolition of the existing building for which the grand tree was removed for two (2) years from the date on which the application for grand tree removal was approved.~~

~~a. — Upon submission of an application for removal of a grand tree under this section, the owner of the property shall sign and have notarized an affidavit which affirms: (1) the reason for the removal of the grand tree, (2) an acknowledgment of and agreement to the two-year moratorium on demolition, and (3) consent to the filing of the signed affidavit with the Clerk of Court for Hillsborough County, the purpose of which is to put all potential bona fide purchasers of said property on notice of the two-year moratorium. No permit for removal of the tree shall be issued without a signed affidavit of the property owner.~~

~~2. — Notwithstanding the above provision, during the two-year period in which demolition of the existing building for which the grand tree was removed is prohibited, the owner of the subject property or the property owner's authorized representative may petition the city council to permit demolition of the building. The city council may authorize demolition of the subject building upon a finding that demolition of the structure is necessary for the public health, safety and welfare of the citizens of the City of Tampa, or prohibiting~~

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~~demolition will place undue, unforeseeable financial burden on the owner, or for just cause and in cases involving extreme circumstances and unusual hardship that the city council determines necessitate demolition of the building. The petition shall be filed with the city clerk and shall specify the grounds for the petition, the relief desired, and the applicable provisions of this chapter on which the appeal is based. No permits allowing demolition of the subject building shall be issued or approved while the petition is pending unless the Natural Resources Coordinator, or designee determines demolition of the building is immediately necessary for public safety. No fee shall be charged by the city for the filing of an appeal under this provision.~~

~~d.~~ *Adverse impacts.* All applications for the removal of a protected or grand tree shall be reviewed to ensure that: (i) the removal of the protected or grand tree is not injurious to the public health, safety and welfare; and (ii) the removal of the protected or grand tree is consistent with the terms of this chapter and the city's comprehensive plan. In connection therewith, all such applications shall be reviewed to ensure that the removal of a protected or grand tree shall not:

1. Substantially lower the water table on the parcel of property;
2. Substantially lessen the ability of natural assimilation of nutrients, pollutants, silt and other noxious substances into the ground or surface water on a parcel of property;
3. Substantially impact the existing biological or ecological systems on a parcel of property;
4. Substantially reduce available wildlife habitat on a parcel of property; or
5. Substantially reduce the fair market value of other parcels of property located in the surrounding neighborhood. If substantial and competent evidence exists that the removal of a protected or grand tree would have any one (1) of the detrimental impacts described above, then the issuance of a tree removal permit shall be conditioned upon the permit applicant taking actions as may be necessary to correct or to mitigate the detrimental impact from the removal of the protected or grand tree.

~~e.~~ *Relocation or replacement required.* Any protected or grand tree that is permitted to be removed shall be either relocated or replaced with a recommended tree on the same parcel of property (or on right-of-way located adjacent to the parcel) in accordance with section 13-165 of this chapter unless otherwise expressly exempted in this chapter. If it is not possible to relocate or replace a protected or grand tree on the same parcel (or on adjacent right-of-way), then the permit applicant shall make a contribution to the ~~park's department~~ city's tree trust fund, in accordance with the terms of section 13-165 of this chapter and Chapter 16 of this Code.

(3) *Protected trees, generally.* An application for tree removal and replacement shall be granted by the Natural Resources Coordinator, or designee when he determines.

- a. That one (1) or more of the following conditions exist:
 1. The protected tree is determined to be "hazardous" by the city's Natural Resources Coordinator, or designee or the designee of the city's Natural Resources Coordinator, or designee after a physical inspection of both the protected tree and the parcel on which the protected tree is located in

accordance with subsection 13-45(g)(2)(a) of this chapter. The city's Natural Resources Coordinator, or designee may delegate the responsibility of determining whether a protected tree is hazardous to one (1) or more city staff persons provided that those staff persons either:

- ~~(a)~~i. Are an International Society of Arboriculture certified arborist; or
- ~~(b)~~ii. Have been specifically trained by the city's Natural Resources Coordinator, or designee in connection with the application of the "tree hazard evaluation form;"

2. The protected tree is located in an area where a structure or improvement will be placed, or where a structure or improvement currently exists, and, if not removed, will deny reasonable use of the property or cause serious damage to an existing building, as determined in accordance with subsection 13-45(g)(2)(b) of this chapter; however, for new construction if the development can be reasonably reconfigured to provide reasonable use, then such reconfiguration shall be made;
3. The protected tree is diseased or injured to the extent it is irreparably damaged;
4. The protected tree creates unsafe vision on a public street or right-of-way and cannot be trimmed to correct the unsafe vision;
5. The protected tree is required to be removed to remove unhealthy or damaged vegetation;
6. The protected tree is required to be removed for an approved infrastructure improvement or structure; (No more than thirty (30) percent of the protected trees on a parcel shall be removed for infrastructure improvements for a subdivision);
7. The protected tree prevents access to a proposed structure or access to a necessary part of a building site, and a redesign of the development plan is not feasible;
8. The protected tree is located in an area where fill will be placed on a parcel pursuant to a development order and/or a grade-fill excavation permit has been issued by the city and the applicant has demonstrated it is not reasonably practicable to utilize arboricultural techniques to preserve a protected tree; or
9. The protected tree or trees will prevent the comprehensive implementation of the bona fide agricultural use; and

- b. The Natural Resources Coordinator, or designee has determined that the permit application complies with the general standards contained in subsection 13-45(g)(2)(~~ea~~) and subsection 13-45(g)(2)(~~d~~) of this chapter.

(4) *Protected trees on non_wooded land.*

- a. For non_wooded land, all administrative permits shall require the retention of fifty (50) percent of the protected trees on a parcel, at a minimum, exclusive of wetlands.
- b. All applications to remove more than fifty (50) percent of the protected trees on a parcel of non_wooded land shall be reviewed and heard by the city board having variance authority in connection with the parcel of non_wooded land at a

public hearing in accordance with the procedure for variances as set forth in Chapter ~~17.5~~ 27 of this Code. Any such application shall be reviewed by the appropriate city board based on the variance criteria in Chapter ~~17.5~~ 27 of this Code or the reasonable use criteria contained in subsection 13-45(g)(2)(b) of this chapter.

(5) *Protected trees on wooded land.*

- a. For wooded land, all administrative permits shall require the retention of the following percentages of the existing protected trees on a parcel, exclusive of wetlands:
 - 1. Single-family, two-family use and any use not otherwise specified herein, a minimum of fifty (50) percent;
 - 2. Multiple-family use, a minimum of forty (40) percent; and
 - 3. Commercial and industrial uses, a minimum of twenty-five (25) percent.
- b. All applications to retain less than the percentages of protected trees listed above on a parcel of wooded land shall be reviewed by the appropriate city board having variance authority in connection with the parcel of wooded land at a public hearing in accordance with the procedure for variances as set forth in Chapter ~~17.5~~ 27 of this Code. Any such application shall be reviewed by the appropriate city board based on the criteria for variances in Chapter ~~17.5~~ 27 of this Code or the reasonable use criteria contained in subsection 13-45(g)(2)(b) of this chapter.

(6) *Grand trees.*

- a. Removal of a non-hazardous grand tree causing structural damage to an existing building. The Natural Resources Coordinator or designee shall approve an application, once the determination has been made, after consultation with the city's building official or designee, that a grand tree has grown or will likely grow within one (1) year, in such a manner that it has caused, is causing, or will cause structural damage to the foundation, structural walls, structural roof, or other major structural component or system of an existing building (i.e. "affected building").
 - 1. Demolition of the affected building is prohibited for a period of two (2) years from the date that the related grand tree removal permit was issued (i.e. "demolition abatement period"). The city shall not issue any permit(s) that grant approval for the demolition of the affected building during the demolition abatement period.
 - 2. As part of an application for removal of a grand tree under this subsection, the property owner shall submit a signed and notarized affidavit that affirms the following:
 - i. The reason for the removal of the grand tree, as approved by the city;
 - ii. The property owner's acknowledgment of, and agreement to, the demolition abatement period related to the affected building, and any permit(s) therefor; and,
 - iii. The property owner's agreement to file and record the affidavit with the Clerk of Court for Hillsborough County, the purpose of which is to put all potential bona fide purchasers of said property, on notice of the demolition abatement period.

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The related grand tree removal permit shall be issued, upon the filing of a certified copy of the recorded affidavit with the city, by the property owner.

3. Notwithstanding the provisions set forth in paragraphs 1. and 2. above, during the demolition abatement period, the subject property owner or authorized agent, may petition city council to permit demolition of the building (i.e. "petition to permit demolition").

i. *Petition to permit demolition.* The petition shall be filed with the city clerk and shall specify the following:

(aa) The grounds for the petition;

(bb) The relief desired; and,

(cc) The applicable provisions of this chapter on which the petition is based.

No fee shall be charged by the city for the filing of such petition under this provision. The property owner shall not be required to provide any supplemental public notice.

ii. The city shall not issue any permit(s) that grant approval for the demolition of the affected building while the petition is pending, unless the Natural Resources Coordinator or designee, with consultation of the city's building official, determines such demolition is immediately necessary for public safety purposes.

iii. *City council review and decision.* The city council may authorize demolition of the affected building, upon finding at least one (1) of the following, based on competent substantial evidence presented as part of its review:

(aa) That demolition of the structure is necessary for the public health, safety, and welfare of the citizens of the city; or,

(bb) Prohibiting demolition will place undue, unforeseeable, financial burden on the property owner; or,

(cc) For just cause, and in cases involving extreme circumstances and unusual hardship that the city council determines, necessitate demolition of the affected building.

For those petitions where city council does not find evidence in support of (aa), (bb), or (cc) above, city council shall deny the petition, thus denying the permission for the city to grant the demolition permit for the affected building prior to the conclusion of the demolition abatement period.

b. *Removal of a non-hazardous grand tree, due to impact(s) associated with the construction of a single-family detached dwelling (principal structure).*

1. The Natural Resources Coordinator or designee shall accept and review a request to remove a non-hazardous grand tree, due to impact(s) associated with construction of a single-family detached dwelling (principal structure), subject to the following minimum thresholds:

- i. Such removal request is part of, or made in conjunction with, a building permit to:
 - (aa) Construct a single-family detached dwelling, principal structure;
or,
 - (bb) Construct an addition, of heated floor area, to a single-family detached dwelling, principal structure;

And,
 - ii. The zoning lot, as described in the subject building permit, complies with the following minimum requirements:
 - (aa) Lot Width: < 75 feet (pursuant to sec. 27-161, lot measurement standards); and,
 - (bb) Lot Area: ≤ Minimum lot area of the underlying zoning district (refer to Chapter 27, Article III, minimum lot area standards by applicable zoning district).
2. The Natural Resources Coordinator or designee shall approve the removal of a non-hazardous grand tree, due to impact(s) associated with construction of a single-family detached dwelling (principal structure), subject to the criteria below. Specifically, the request must demonstrate compliance with i., together with ii. or iii.(aa) and/or (bb), in order to secure such approval. (Refer also to *Graphic 13-45G-1*)
- i. The trunk of the subject tree is located within the footprint of the proposed principal structure, as shown on the construction plans submitted as part of the related building permit; and,
 - ii. That the footprint of the proposed principal structure encompasses at least ninety (90) percent of the total area of the principal structure buildable area (i.e. that portion of the zoning lot remaining, after required principal structure yards have been provided);
- Or,
- iii. That the subject tree would be rendered irreversibly and irreparably damaged, even with the incorporation, by the applicant, of one (1) or both of the following options:
 - (aa) That the footprint of the proposed principal structure is shifted, to the maximum allowable alternative yard (i.e. “setback”), of twenty-five (25) percent of the applicable minimum yard(s) for the principal structure. For purposes of subsection (6)b., the alternative setback(s) is(are) specific to and granted automatically for the preservation of a non-hazardous grand tree. The extent of the alternative setback is limited to the shortest horizontal dimension needed, to preserve the subject tree, or twenty-five (25) percent of the applicable minimum yard(s) for the principal structure, whichever is less; and/or,
 - (bb) The use (design/construction) of an approved alternative construction method (i.e. elevated foundation with air spade, as detailed in the tree and landscape technical manual).

For purposes of this section, “irreparable(-ly) or irreversible(-ly) damage(d)” shall mean that damage inflicted upon a tree’s root system, trunk, and/or crown, by any means, to such a degree that the tree condition is rendered ‘hazardous’ or ‘dangerous,’ according to the city’s “tree hazard evaluation form,” as evaluated by the Natural Resources Coordinator or designee. Such damage or abuse has or will cause the tree incapable of correction, repair, or return to structurally stable condition.

- ac. *Hazardous grand trees.* The Natural Resources Coordinator, or designee shall approve an application to remove a grand tree that is determined by the city's Natural Resources Coordinator, or designee or designated city certified arborist within the planning and development department to be hazardous pursuant to the following procedure:
1. Determination by the city's Natural Resources Coordinator, or designee.
 - (a) *Hazardous tree removal.* The city's Natural Resources Coordinator, or designee or designated city certified arborist within the planning and development department shall determine whether the grand tree is hazardous in accordance with subsection 13-45(g)(2)(a) of this chapter after a physical inspection of both the grand tree and the parcel on which the grand tree is located. The physical inspection and written determination as to whether the grand tree is hazardous shall be made by the city's Natural Resources Coordinator, or designee or designated city certified arborist within the planning and development department and shall not be delegated to any other city staff person. The director of the planning and development department shall also review the permit application to ensure that it complies with the general standards contained in subsection 13-45(g)(2)(a) and subsection 13-45(g)(2)(d) of this chapter.
 - (b) *Emergency hazardous tree removal.* If the city's Natural Resources Coordinator, or designee or designated city certified arborist within the planning and development department and the Natural Resources Coordinator, or designee determine immediate removal of a hazardous tree is necessary to protect the public health, safety and welfare, the notice and stay provisions described in subsections 2 and 3, below, shall not be required and the grand tree may be immediately removed.
 2. *Notice.* As part of the application to remove a grand tree because it is hazardous, the property owner or the property owner's authorized representative shall notify in writing all abutting property owners (according to the latest ad valorem tax records) and the registered neighborhood organization for the neighborhood in which the parcel of property is located (as determined by the city's neighborhood liaison office) of the request by United States Mail as evidenced by a "certificate of mailing" issued by the United States Post Office. In addition, immediately upon written approval of the application to remove the grand tree (if approved), the property owner or the property owner's authorized representative shall post a sign on the property stating that the application to remove the grand tree has been approved. The sign shall be posted in a conspicuous location on the property clearly visible from any public right(s)-of-way located adjacent to or contiguous with the property. Failure to comply with

these notice requirements shall invalidate the administrative approval of the application for the removal of a grand tree because it is hazardous. The property owner or the property owner's authorized representative shall provide the Natural Resources Coordinator, or designee with an affidavit together with the certificate of mailing and photographs of the sign evidencing compliance with these notice requirements prior to the issuance of any permit for the removal of a grand tree.

3. *Stay period.* If approved, the application to remove a grand tree shall not be effective and the project shall not be eligible for issuance of any applicable permits including a permit to remove the grand tree for two (2) weeks (fourteen (14) calendar days) from the date of the written approval, or the date all other necessary project approvals have been received, whichever is later.
4. *Conditions.* Reasonable conditions may be imposed upon any approved application to remove a grand tree to ensure that the public health, safety and general welfare are protected and substantial justice is done. A violation of any imposed conditions shall be a violation of this chapter.
5. *Appeal.* The property owner, the property owner's authorized representative and any party that is entitled to notice of the application by mail as required above may appeal the administrative approval or denial of an application to remove a grand tree because it is hazardous to city council by filing written notice of appeal with the city clerk within fourteen (14) calendar days of the date the application to remove a grand tree because it is hazardous is approved or denied in writing. The notice of appeal shall specify the grounds for the appeal, the relief desired, and the applicable provisions of this chapter on which the appeal is based. The city council shall apply a de novo standard of review and shall not be limited in its review to that information, documentation or evidence upon which the Natural Resources Coordinator, or designee based the determination. No permits allowing the removal of the grand tree shall be issued or approved while an appeal is pending. The person making the appeal shall notify the property owner, the property owner's authorized representative (if any), and all persons receiving notice of the application under this subsection of the appeal by providing them with a copy of the notice of the appeal and notice of the hearing date for the appeal in writing by a "certificate of mailing" through the United States Post Office at least ten (10) calendar days prior to the appeal hearing date. The person making the appeal shall prepare an affidavit showing: i. the parcels of property that abut the subject property; ii. the names of the owners of such parcels of property; and, iii. the date and post office address to which each copy of the notice was mailed. The affidavit shall be filed with the city clerk not less than three (3) days prior to the date of the public hearing. Failure to comply with these notice requirements shall result in a dismissal of the appeal by city council with prejudice.
6. *Quarterly report.* The Natural Resources Coordinator, or designee, on a quarterly basis, shall mail a copy of the list of approved applications to remove hazardous grand trees to all organizations requesting such information. The list will specify the size, specie and location of the trees.
7. *Monthly report.* The Natural Resources Coordinator, or designee, on a monthly basis, shall submit a report summarizing the size, location and specie of

hazardous grand trees removed pursuant to an administratively approved permit application to remove a grand tree with a copy of the city's Natural Resources Coordinator, or designee's tree hazard evaluation to each of the city boards authorized to grant variances and to city council.

- ~~6d.~~ *Reasonable use.* Permit applications for the removal of a grand tree because the grand tree allegedly denies reasonable use of a parcel of property shall be submitted to and considered by the city board having variance authority in connection with that parcel of property pursuant to Chapter ~~17-5~~ 27 of this Code. In connection therewith, the permit applicant shall also state in his, her or its application whether a variance of any setback, height or similar zoning restriction would allow reasonable use of the parcel of property while preserving the grand tree. If so, the permit application shall also request a variance of any such applicable setback, height or similar zoning restriction as an alternative to the application to remove the grand tree. The permit application shall be noticed by the applicant and shall be considered by the appropriate city board in the same manner as a variance request; provided, however, the determination as to whether a grand tree denies reasonable use of a parcel of property shall be made by the appropriate city board based on the criteria set forth in subsection 13-45(g)(2)(b) of this chapter. If it is possible to redesign a use or a development to preserve a grand tree and to allow for reasonable use of a parcel without a variance, then the applicant shall redesign the project. The appropriate city board shall also review the permit application to ensure that it complies with the general standards contained in ~~subsection 13-45(g)(2)(c) and~~ subsection 13-45(g)(2)(d) of this chapter.
- (7) *Work authorized under tree removal permit.* The permittee is authorized to remove the tree or trees described in his permit application after an approved inspection.

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